

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9556 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRIMATI DIVABEN W/O KARSANJJIPUNJAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS AMIBEN YAGNIK, LG AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/02/97

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the detention order dated 13/11/1996 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention is passed have been annexed with the petition at Annexure-B. They inter-alia indicate that the petitioner through her associates has been carrying on criminal and anti-social activities of dealing in country liquor and six prohibition cases of 1995 and eight cases of 1996 have been registered in Palanpur City Police Station against the petitioner under the provisions of the Bombay Prohibition Act.

3. It has been recited that the petitioner's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. It has also been recited that the petitioner through her associates has been beating the concerned witnesses and has been creating atmosphere of fear.

4. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention stamping the petitioner as 'boot-legger' under sec. 2(b) of the PASA Act.

5. The petitioner has challenged the impugned order of detention on number of grounds inter-alia on the ground that the impugned order of detention prescribed period of detention being one year from the date of detention and, therefore, the same is contrary to the scheme of the Act as laid down in Pravin Mahipatral V/s. District Magistrate reported in 1993(1) GCD 671. A Division Bench consisting of B.S. Kapadia, J. as he then was and D.G. Karia, J. ruled that an order prescribing period of detention would be contrary to the provisions of sec. 3(3) of the PASA Act, which would require approval of the State Government within twelve days and would also be contrary to the express provision of Article 22(4) of the Constitution of India, inasmuch as without the opinion of the Advisory Board no person could be detained for more than three months. It is therefore, submitted that the impugned order directly detaining the petitioner for one year from the date of the detention would be contrary to the provisions of the PASA Act as well as the provision contained in Article 22(4) of the Constitution of India. In my opinion, there is no answer to this proposition of law. Hence, the impugned order of detention is required to be struck off. Following order is, therefore, passed without entering into other grounds of challenge against the impugned order of detention :-

The impugned order of detention is hereby quashed

and set aside. The petitioner-detenu- Smt. Divaben W/o. Karsanji Punjaji Thakor shall be forthwith set at liberty, if she is not required to be detained in any other case. Rule made absolute accordingly.

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